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# **United States District Court**

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 FRANCISCO P. CASTILLO, JR., No. C 08-2343 CW (PR)  
12 Petitioner,  
13 v. AMENDED ORDER DENYING  
14 BEN CURRY, Warden, DENYING CERTIFICATE OF  
15 Respondent. APPEALABILITY

19       Pro se Petitioner Francisco P. Castillo, Jr., seeks a writ of  
20      habeas corpus under 28 U.S.C. § 2254 challenging the June 27, 2007  
21      decision of the California Board of Parole Hearings (BPH) denying  
22      him parole at his third parole suitability hearing. Doc. No. 1 at  
23      11. Specifically, Petitioner argues he is entitled to federal  
24      habeas relief because there was no reliable evidence presented at  
25      Petitioner's parole suitability hearing that he posed a "current  
26      risk to public safety," and that the BPH did not give him the  
27      "individualized consideration" and applied a "blanket no-parole  
28      policy" in denying him a parole date, all of which violated his

1 right to due process. Id. at 11; Doc. No. 12 at 3 (emphasis  
2 omitted).

3 The United States Supreme Court recently made clear that in the  
4 context of a federal habeas challenge to the denial of parole, a  
5 prisoner subject to a parole statute similar to California's  
6 receives adequate process when the BPH allows him an opportunity to  
7 be heard and provides him with a statement of the reasons why parole  
8 was denied. Swarthout v. Cooke, No. 10-333, slip op. at 4-5 (U.S.  
9 Jan. 24, 2011). Here, the record shows Petitioner received at least  
10 this amount of process. The Constitution does not require more.  
11 Id. at 5.

12 The Court also made clear that whether the BPH's decision was  
13 supported by some evidence of current dangerousness is irrelevant in  
14 federal habeas: "it is no federal concern . . . whether  
15 California's 'some evidence' rule of judicial review (a procedure  
16 beyond what the Constitution demands) was correctly applied."  
17 Swarthout v. Cooke, slip op. at 6.

18 Accordingly, the instant federal Petition for a Writ of Habeas  
19 corpus is DENIED.

20 Further, a Certificate of Appealability is DENIED. See Rule  
21 11(a) of the Rules Governing Section 2254 Cases. Petitioner has not  
22 made "a substantial showing of the denial of a constitutional  
23 right." 28 U.S.C. § 2253(c)(2). Nor has Petitioner demonstrated  
24 that "reasonable jurists would find the district court's assessment  
25 of the constitutional claims debatable or wrong." Slack v.  
26 McDaniel, 529 U.S. 473, 484 (2000). Petitioner may not appeal the  
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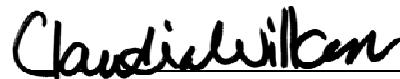
1 denial of a Certificate of Appealability in this Court but may seek  
2 a certificate from the Court of Appeals under Rule 22 of the Federal  
3 Rules of Appellate Procedure. See Rule 11(a) of the Rules Governing  
4 Section 2254 Cases.

5 The Clerk shall terminate any pending motions as moot, enter  
6 judgment in favor of Respondent and close the file.

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8 IT IS SO ORDERED.

9  
10 Dated: 2/8/11



CLAUDIA WILKEN  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

FRANCISCO P. CASTILLO JR.,

**Plaintiff,**

Case Number: CV08-02343 CW

V.

B. CURRY et al,

Defendant.

## **CERTIFICATE OF SERVICE**

7 B. CURRY et al,  
8 Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on February 8, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

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15 Francisco P. Castillo C-85768  
16 Correctional Training Facility  
C-329-Low  
17 P.O. Box 689  
Soledad, CA 93960

18 | Dated: February 8, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk